IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION LD.NO.3479 OF 2004

WITH

WRIT PETITION NO.30 OF 2005

W.P. Ld. No.3479/2005 :

Nandkumar Mansing Katkar & Ors. ...Petitioners.
Versus
Mumbai District Central Co-op. Bank Ltd. & Ors. ...Respondents.

.....

Mr.Shekhar Naphade, Senior Advocate with Mr. A.S. Desai, Mr.Vijay Mane and Mr. R.S. Ghadge for the Petitioners.
Mr.C. J. Sawant, Senior Advocate with Mr. G.W. Mattos, AGP for Respondent No.2 to 6.

.....

W.P. No.30/2005:

Chandrakant Mukutrao Khopde & Anr. ...Petitioners.
Vs.
The Divisional Joint Registrar,
Co-op.Societies, Mumbai & Ors. ...Respondents.

.....

Mr.M. N. Bhadrashete for the Petitioners.
Mr. C.J. Sawant, Senior Advocte with Mr. G.W. Mattos, AGP for Respondent Nos.1, 2 and 17.

.....

CORAM : DR. D.Y. CHANDRACHUD, J.

24th January 2005.

ORAL JUDGMENT:

I

These Writ Petitions under Article 226 of the Constitution seek to impugn the correctness of an order passed by the Divisional Joint Registrar of Co-operative Societies on 21st December 2004 in exercise of powers conferred by Section 77A of the Maharashtra Co-operative Societies Act, 1960 ("the Act"). By and as a result of the directions contained in the order of the Divisional Joint Registrar, an administrator has been appointed in order to look after the affairs of the Mumbai District Central Co-operative Bank for a period of six months. The Petitioners before the Court in the two petitions are Directors of the First Respondent. They seek to question the correctness of the order passed by the Divisional Joint Registrar which, it is common ground, was without issuing a notice under the provisions of Section 77A or furnishing an opportunity of being heard.

For the reasons which I now propose to elucidate, I have come to the conclusion that the order which has been passed by the Divisional Joint Registrar is manifestly inconsistent with the provisions of law and in excess of his jurisdiction under Section 77A.

II

2. The facts giving rise to the present set of matters are that on 24th June 1999, an election took place to the Board of Directors of the First Respondent in pursuance whereof, the Collector declared the results. The First Respondent is a District Central Co-operative Bank and is a specified society under Section 73G. The election of the Board of Directors is conducted in accordance with the provisions of Chapter XI-A of the Act under the authority of the Collector and in accordance with the provisions of the Maharashtra Specified Co-operative Societies (Election to Committees) Rules, 1971. The tenure of the Board of Directors was consequently due to expire on 4th July 2004. On 10th February 2004, the First Respondent addressed a letter to the Collector recording that since the first meeting of the newly elected Board of Directors had been held on 5th July 1999, the

term of office was due to expire on 4th July 2004. The Collector was consequently requested to initiate the election programme and to issue necessary directions in that regard.

3. On 4th March 2004, the State Government issued a notification in exercise of its power under Section 73-IB of the Act postponing elections to Co-operative Societies in view of the ensuing parliamentary elections, for a period of three months. On 25th May 2004, the Collector addressed a letter to the First Respondent following a meeting which was held on the previous day, directing the First Respondent to prepare the voters' list in accordance with the requisitions contained in his letter and stating that the programme for the publication of the voters' list would be intimated to the First Respondent separately. On 4th June 2004, the First Respondent addressed a letter to the Collector stating that in view of the difficulties which were set out therein, a period of two months would be required in order to complete the process of inviting names of the delegates from the constituent members of the First Respondent and for the

preparation of a provisional voters' list.

4. On 8th June 2004, the State Government issued a notification under Section 73-IB of the Act postponing elections to Co-operative Societies in the State in view of the ensuing elections to the State Legislative Assembly, until 15th October 2004, or until the elections to the Assembly were concluded. On 25th August 2004, the First Respondent addressed a communication to the Collector, Mumbai with reference to the Collector's letter dated 25th May 2004. While adverting to the postponement of the elections under the directions of the State Government dated 8th June 2004, the First Respondent requested the Collector to clarify as to what would be relevant date for the preparation of a provisional voters' list and sought an extension of three months for completing the process. On 7th September 2004, the Collector replied to the First Respondent's communication and stated that the cut off date for the preparation of the provisional voters' list is 30th June 2004.

5. On 14th September 2004, the First Respondent addressed a communication to the Collector stating therein that as of 30th June 2001, the Bank had 9191 societies as its members and as of 30th June 2002, it had 1848 individual members. On 14th September 2004, the Bank had called upon the constituent societies which were its members to nominate their respective delegates or representatives; a period of about one week would have to be allowed for these societies to hold their own meetings and a period of approximately two weeks would be necessary for communication of the names of the individual representatives of those societies to the First Respondent. In these circumstances, the Collector was requested to extend time for preparation of the provisional voters' list until 31st October 2004. By his communication of 26th September 2004, the Collector extended the time until 15th October 2004. Thereafter, on 18th October 2004, a provisional voters' list was submitted by the First Respondent to the Collector.

6. On 6th November 2004, the Collector addressed a

communication to the First Respondent noting that there were deficiencies in the provisional voters' list that had been submitted by the First Respondent and called upon the First Respondent to rectify those deficiencies and to submit a fresh provisional voters' list on or before 20th November 2004. There is no dispute about the factual position that before the time that was prescribed by the Collector, the provisional voters' list was submitted to the District Deputy Registrar on 18th November 2004 who in turn forwarded the list to the Collector on 20th November 2004. On 7th December 2004, the Collector in turn, declared the programme regarding the finalisation of the voters' list. By his notification, the Collector fixed 18th December 2004 as the date for raising objections to the provisional voters' list. On 20th January 2005, the final list of voters had been duly published by the Collector and the election programme is thereafter, required to be completed under the provisions of the Rules within the period stipulated therein.

7. On 21st December 2004, the Divisional Joint Registrar passed an order under Section 77A appointing an Administrator in

respect of the affairs of the First Respondent. The Divisional Joint Registrar has noted in his order that the First Respondent had failed to prepare and furnish a provisional list of voters within the period stipulated in Rule 4 of the relevant rules governing elections to specified societies. The communication then records that on 25th May 2004, the Collector had directed that such a list be furnished on or before 24th June 2004 and it was not furnished by that date. On 7th September 2004, the Collector had granted time until 25th September 2004, despite which a provisional list of voters was not submitted. On 14th October 2004, the First Respondent had sought time until 31st October 2004. A provisional voters' list which was submitted on 6th November 2004 was not found to be in accordance with the provisions of the Rules, as a result of which, time to submit a fresh provisional voters' list was granted until 20th November 2004, on which date the list was submitted. The Collector concluded that the First Respondent has failed to discharge its responsibility of submitting the voters' list to the Collector and that there was a failure on the part of the First Respondent to submit the list within the time as

stipulated. The impugned communication then recites that the term of the existing Managing Committee had come to an end consequent upon which he came to the conclusion that it had become necessary to appoint an Administrator for governing the affairs of the First Respondent.

III

8. In these proceedings, the order passed by the Collector has been called into question. On behalf of the Petitioners, it has been submitted that Section 77A requires a hearing to be afforded before an order appointing an Administrator is passed, though the provision does contemplate that the Collector may dispense with the issuance of a notice where he is satisfied that immediate action is required. It was urged that this was not one of those exceptional cases warranting dispensation of notice. In the present case, it was urged that the Collector had failed to hold the election to the Committee within the meaning of the proviso to sub-section (2B) of Section 73G of the Act in view of the postponement of elections to all Co-operative

Societies in the State by the State Government. Thereafter, once the elections to the Legislative Assembly had taken place, the Collector extended time for the submission of the provisional voters' list and the list which was submitted was within the time so stipulated. In the circumstances, it was urged that the order passed by the Divisional Joint Registrar is contrary to the settled position in law laid down by two judgments of Division Benches of this Court in **Ghatageppa Parreppa Mugeri Vs.M. R. Naik,** 1983 Mh. L.J. 984 and in **Suresh Ambadasrao Warpurkr vs. State of Maharashtra,** 1997 (1) ALL M.R. 335.

9. On the other hand, on behalf of the Respondents, Counsel submitted that Section 73G(2B) specifically provides that where for any reason whatsoever, the election of the members of the Committee is not held or could not be held before the expiry of the term or the extended term, as the case may be, of the existing Committee, the members shall cease to hold office and shall be deemed to have vacated their office. Under Section 144-B, an

election is required to be held as far as possible, some time prior to the date on which the term of office of the retiring members is due to expire. Counsel submitted that under Section 73H, it is the duty of every society to arrange for holding an election before the expiry of its term and the consequence of a failure to do so, under sub-section (2), is that the Committee shall cease to exist on the expiration of its term. Counsel submitted that there is no need to issue notice once the term of office of the Committee was over and upon expiry of its term, the existing Committee had no right to continue. Counsel submitted that the Committee had in the present case sought an extension of time to furnish the provisional voters' list on flimsy grounds and the action of the Collector in extending time should not be regarded as amounting to a waiver of the effect of the statutory provisions of Section 73G(2).

IV

10. In order to consider the rival submissions which have been urged in these proceedings, it would, at the outset, be necessary to advert to the relevant statutory provisions which hold the field.

Section 73G provides that the election of the members of the Committee and the officers by the Committee, of societies of certain specified categories shall be subject to the provisions of Chapter XI-A of the Act. Among those categories are District Central Co-operative Banks. Sub-section (2) of Section 73G then provides that when the election of all the members of the Committee of any such society is held at the same time, the members elected on the committee at such general election shall hold office for a period of five years from the date on which the first meting is held. The State Government is empowered to extend the aforesaid period for a period not exceeding one year so that the total period does not exceed six years in the aggregate. That is how in the present case, since the first meeting of the elected committee had been held on 5th July 1999, the term of office of that Committee was due to expire on 4th July 2004. Under sub-section (2B) of Section 73G, it has been provided that where for any reason whatsoever, the election of the members of the Committee was not held or could not be held before the expiry of the term or the extended term, as the case may be, of the existing

committee, the members including the officers of the committee shall cease to hold office on the expiry of its term or extended term, as the case may be, and they shall be deemed to have vacated their offices. The substantive part of sub-section (2B) therefore, provides that the existing Committee shall cease to hold office upon the expiry of its term whenever an election cannot be held before the expiry of the term and whatever be the reasons for not holding the election. The proviso to sub-section (2B), however, carves out an exception which is to the effect that where the Collector fails to hold the election to the committee of any such society, the term of office of the members of the committee of that society shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly constituted committee. Sub-sections (2), (2A) and (2B), it may be noted, were substituted by Maharashtra Act, 20 of 1986. The proviso to sub-section (2B) was introduced by Amending Act of 4 of 2001.

11. Sub-section (1) of Section 77A empowers the Registrar to

appoint an Administrator in various eventualities. Clause (b) of sub-section (1) provides one such eventuality where the term or the extended term, as the case may be, of the committee of any society or of any of its members has expired or for any other reason an election is held and there is a failure to elect all or any of the members required to fill the vacancies. Upon his satisfaction in regard to existence of the conditions laid down in sub-section (1), the Registrar has the discretion either suo motu or on the application of any officer of the society, to appoint inter alia a committee to act as an administrator for managing the affairs of the society till a new committee enters upon office. Under the proviso to sub-section (1) of Section 77A, the Registrar is under an obligation to publish a notice on the notice board at the head office of the society, inviting objections and suggestions with respect to the proposed order within a period to be specified in the notice and to consider all objections and suggestions received by him within that period. The second proviso, however, creates an exception, in that it shall not be necessary to publish such notice in any case where he is satisfied

that immediate action is required to be taken or that it is not reasonably practical to publish such notice.

12. Section 144-B of the Act provides that every election shall be held as far as possible sometime prior to the date on which the term of office of the retiring member or members is due to expire. Under Section 144-C every election shall be held on such date or dates as the Collector may fix, and shall be conducted under his control by such Returning Officer and other officers, as may be appointed by the Collector in this behalf. Under sub-section (2) of Section 144-C in all cases, where a society has to send a nominee as a member of the committee of any specified society, the election of such nominee shall be conducted under the control of the Collector of the district in which the registered office of the society sending the nominee is situated. Sections 144-B and 144-C fall under the provisions of Chapter XI-A which deals with elections of committees of societies belonging to the categories specified in Section 73G. These are compendiously referred to as specified societies.

13. The State Government has framed rules called the Maharashtra Specified Co-operative Societies (Election to Committees) Rules, 1971. Under Rule 3, the District Deputy Registrar is by the 5th day of April every year, required to report to the Collector the names and addresses of the societies in his District, in which elections are to be held during the year under the provisions of Section 73G read with Chapter XI-A. The District Deputy Registrar is required to send to the Collector with his report two copies of the bye-laws of each of the said societies. Rule 4 of these rules then deals with the preparation of the provisional voters' list. Thereunder, the provisional voters' list is to be prepared by every society for the year in which general elections are due to be held. Persons who are members as on 30th June of the year immediately preceding the year in which such election is due are required to be included in the provisional list. The proviso to sub-rule (1) of rule 4, however, stipulates that if any case, the preparation of the provisional list of voters falls due after the expiry of a period of six months from the 30th

day of June, the Collector may, in consultation with the Registrar in the case of certain specified societies and in consultation with the District Deputy Registrar in respect of certain other societies, by order change the date of the 30th day of June and the subsequent dates and fix revised dates for the purposes of the rules. Under sub-rule (2) of Rule 4 each society is required to submit to the Collector through the District Deputy Registrar four copies of the provisional voters' list so as to reach the Collector by 15th July of the year in which the election is due. The rule thereafter deals with the process of inviting claims and objections to the provisional list. Under sub-rule (3) of rule 4, if any society fails to send copies of the provisional list of voters to the District Deputy Registrar, by 15th July, the Collector shall himself or through any person authorised by him, prepare a provisional list of voters and the expenditure incurred therefor shall be recovered from the society as arrears of land revenue. In that event, the Collector is required to publish a provisional list of voters and to invite claims and objections. Rule 5 provides for particulars to be included in provisional list of voters; Rule 6 provides for claims and

objections to provisional list of voters and finally Rule 7 provides for publication of the final list of voters. Under Rule 8, the Collector is empowered through a non-obstante provision to alter the date prescribed in the foregoing provisions of the Rules, and to appoint such revised dates as he deems fit.

14. The provisions of Chapter XI-A in particular, and the Maharashtra Co-operative Societies (Election to Committees) Rules, 1971 emphasise that the control over elections to specified societies of the class falling in Section 73G is vested with the Collector. The elections to specified societies have to be held on such date as the Collector may fix and under his control. The Collector is associated at every stage of the election process commencing from the preparation of the provisional list of voters, adjudication of claims and objections thereto, and the publication of the final list of voters. The Collector is empowered to determine the relevant dates with respect to which the provisional list of voters will be published and where the election falls due after the expiry of a period of six months from 30th June to change

the aforesaid date for the purposes of preparing a provisional list of voters. Under Rule 8, he has an overriding authority to alter the dates which are prescribed and to set revised dates. Each of these provisions emphasises the significant role which is ascribed to the Collector both by the provisions of the statute and by the Rules that have been framed thereunder.

15. Under Section 73G(2), the period during which every elected committee of a specified society shall hold office is prescribed as five years from the date on which the first meeting is held. By virtue of sub-section (2B), there is a deeming fiction under which the members of the elected committee are deemed to have vacated their office on the expiry of the term of office of five years upon which the committee shall cease to hold office. The proviso to sub-section (2B) which was brought in by amendment in 2001 has, however, laid down that the term of office of the committee shall be deemed to have been extended until the date of the first meeting of the newly constituted committee where the Collector has failed to hold an election to the

committee. Section 77A(1)(b) confers upon the Registrar, the power, a discretionary power at that, to appoint an administrator where the term or extended term of the Committee or of any of its members has expired. The power to issue an order under section 77A is conditioned by the requirement that the Registrar must publish a notice at the head office of the Society inviting objections and suggestions with respect to his proposed order and that he shall consider all the objections and suggestions that have been received by him in that period. Counsel appearing on behalf of the First Respondent has submitted that once the term of office of an elected committee has expired, there is then no necessity of furnishing an opportunity of being heard to the committee or to any other interested person since as a result of the deeming fiction contained in sub-section (2B) of Section 73G, an administrator will have to be appointed to fill the void created upon the Managing Committee vacating its office. There is more than one reason why this submission cannot be accepted. First and foremost, the proviso to sub-section (1) of Section 77A has advisedly been introduced by the

legislature which in its wisdom considered it necessary that the Registrar must publish a notice inviting suggestions and objections with respect to his proposed order. Not only is the Registrar obliged to publish a notice, he is also required to consider all the objections and suggestions that have been received by him within the period stipulated. The proviso to Section 77A is an important statutory requirement. The supersession of a Managing Committee or the appointment of an Administrator has serious consequences not merely for those who form part of the Managing Committee, but for the Co-operative Society itself and all its members. The requirement that the Registrar must invite objections and suggestions and that he must consider all the suggestions and objections which are received within the period stipulated in the notice is not a meaningless formality. The power which is conferred on the Registrar is of a quasi judicial nature which requires an application of mind by the Registrar to the exercise of the discretion which the statute confers upon him and the consideration of the objections which have been received by him to the action which he proposes to undertake. The statute

restricts the power to dispense notice to the category which it carves out. The category cannot be expanded by administrative fiat. The second reason why the submission which has been urged on behalf of the First Respondent cannot be accepted, is that the proviso to sub-section (2B) of Section 73G lays down that where the Collector has failed to hold an election to the Committee of a society, the term of office of the members of the committee shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly constituted committee. In a case such as the present, before the Registrar even comes to the conclusion under Section 77A(1)(b) that the term of the committee of the society has expired, he must necessarily apply his mind to the question as to whether the proviso to sub-section (2B) of Section 73G has come into force. If the conditions which are incorporated in the proviso to sub-section (2B) are demonstrated to exist, then the term of office of the members of the elected committee necessarily continues by a deeming fiction of law and there is no occasion then to appoint an administrator on the ground that the term of office of the elected

committee has expired. In other words, the Registrar must have due regard to the question as to whether it was the Collector who had failed to hold the election and which has, therefore, given rise to the statutory consequence of extending the term of committee. Obviously, this decision requires an application of mind by the Registrar to all the facts and circumstances of the case and the decision cannot be arrived at in the absence of an opportunity of being heard.

V

16. The provisions of Section 77A have been construed in two decisions of Division Benches of this court. Before adverting to those decisions, it would be material to note that the first decision which was rendered on 8th July 1983 in **Ghatageppa Parreppa Mugeri vs. M. R. Naik,** 1983 Mh. L.J. 984 was before the amendment to Section 73G by the substitution of sub-sections (2), (2A) and (2B) by Maharashtra Act, 20 of 1986. Moreover, the proviso to sub-section (2B) was inserted by Maharashtra Act 4 of 2001. This, however, would not, in

my view, alter the fundamental proposition of law which has been laid down by the Division Bench which emphasises the importance of an opportunity of being heard in compliance with the requirement of Section 77A. Chief Justice M.N. Chandurkar speaking for the Division Bench held that the power to appoint an administrator is a drastic power and the mere fact that the period of office of the members of the Managing Committee has expired does not mean that the members of the Managing Committee become functus officio immediately. These observations in the judgment of the Division Bench were consistent with the legal position which then obtained in 1983 since the Court noted that there was an express provision in Section 73G(2) of the Act which provided that the elected members of the Managing Committee who hold office for a period of five years shall continue in office until immediately before the first meeting of the members of the new committee. This provision, as seen earlier, has now been modified. The statute now provides that in the generality of cases, the Managing Committee shall cease to hold office on the expiry of its term and shall be deemed to have vacated its office. The

proviso, however, allows the existing term of the Managing Committee to continue in one specified eventuality, namely, in the event that the Collector has failed to hold the election to the committee. While noting this difference in the statutory provision that existed when the Division Bench delivered judgment and at present, it would nonetheless, be relevant for the purposes of this case to refer to the following observations contained in the judgment of the Division Bench in regard to the importance of furnishing a hearing and the circumstances in which hearing could be dispensed with:

> "The power to dispense with the statutory requirement of notice inviting objections is an extraordinary power which cannot be exercise as a matter of course. When the exercise of such a power is challenged, the Assistant Registrar is bound to put on record circumstances which, according to him, justified non-compliance or dispensing with the requirement of the first proviso. It has to be noted at the outset that the Assistant Registrar seems to have

> assumed that notices as required by the first proviso were necessary only to the members of the outgoing committee. This view does not seem to be justified by the wide sweep of the wording of the first proviso. Supersession of an existing managing committee by an administrator is not something which concerns only the members of the managing committee. It vitally affects the right of the members of a co-operative society to have the business of their society being run by duly elected members of the managing committee. That is why a very general provision of publication of a notice on the notice board at the head office of the society is made. When such a notice is published, there is nothing to prevent an ordinary member of a society from raising an objection to the proposed action under section 77A(1) of the Act."

The words "failure to elect" would according to the Division Bench implicate that the failure should be on the part of the members of the

society.

17. The second decision of a Division Bench of this Court in **Suresh Ambadasrao Warpurkar vs. State of Maharashtra,** 1997(1) ALL MR 335 is a decision which has been rendered after the amendment of 1986. In that case, the District Deputy Registrar had called for the voters' list from the Parbhani District Central Co-operative Bank which is a specified society on 23rd June 1994 but since in the meantime, the Government had stayed the elections to Co-operative Societies on 9th August 1994, the Manager of the Bank wrote to the District Deputy Registrar that the sending of the voters list was not necessary in view of the stay of the election. The District Deputy Registrar did not take any action for a period of six months after which he again wrote a letter to the Bank calling for the voters list. The Bank thereafter published a notification calling for the names of delegates representing its constituent societies. On 29th March 1995, the District Deputy Registrar called upon the Bank to send its voters list on 4th April 1995 and on the latter date without

waiting for the receipt of the list of members, appointed an administrator under Section 77A. The Division Bench held that if the Collector has failed to hold the election on account of a non-cooperation of the Co-operative Society or non-supply of required material such as the list of members to be included in the voters' list, the members cannot then have a right to continue in office until the new election takes place. However, when the failure of the Collector was because of the directions of the Government not to hold elections or because of the failure of the Collector's own machinery to hold the elections, then the committee will continue in office till the elections take place. If the elections were postponed because of the exercise of the Government' spowers, then the continuance of the committee will be a consequence not to be attributed to the members' desire to continue in office. The action of the Registrar in appointing an administrator was accordingly set aside.

VI

18. In so far as this case is concerned, it would clear from the

narration of facts that on 10th February 2004, the First Respondent had drawn the attention of the Collector to the necessity of commencing the election process in view of the fact that the term of office of the elected members of the Board of Directors was to expire on 4th July 2004. Elections to Co-operative Societies in the state were stayed as a result of two notifications issued by the State Government in exercise of its powers under Section 73-IB. The first notification came on 4th March 2004 in view of the impending Parliamentary election. On 19th May 2004, the Collector wrote to the First Respondent with certain requisitions. The First Respondent addressed a letter to the Collector on 4th June 2004 seeking an extension of 60 days for completing formalities since names of the representatives of the constituent member societies were required to be notified and forwarded. Whether this period of 60 days which was sought was unreasonably long, ceased to have any practical significance because on 8th June 2004, the State Government issued its second order under Section 73-IB postponing the elections in view of the impending elections to the Legislative Assembly until 15th

October 2004. On 25th August 2004, the First Respondent once again wrote to the Collector in response to which the Collector by his letter dated 7th September 2004 furnished time until 25th September 2004 for preparing the provisional list of voters. This action of the Collector in extending the date for the submission of the provisional list of voters must trace its authority to the proviso to sub-rule (1) of Rule 4 of the Rules framed for elections to Specified Co-operative Societies. On 7th September 2004, the Collector, in fact, modified the cut off date for the preparation of the voters' list pointing out that since elections were being held after 1st October 2004, in accordance with the directives of the Commissioner (Co-operation), the cut off date for the preparation of the voters' list would be 30th June 2004. The cut off date was thus altered from 30th December 2003 to 30th June 2004 by the Collector' s communication dated 7th September 2004. The Collector then by his letter dated 29th September 2004 extended time for submission of the provisional list of voters to 15th October 2004 and on 6th November 2004 while noting certain deficiencies in the provisional list of voters, extended time until 20th November 2004.

There is no dispute about the factual position that the provisional list was submitted on 18th November 2004 within the time which was extended by the Collector. Pursuant thereto, the Collector announced the programme for inviting claims and objections to the voters' list. That process was pursued and eventually, the final list of voters came to be published on 20th January 2005.

19. In this view of the matter, when elections to Co-operative Societies within the State were postponed by the State Government in exercise of the power conferred by Section 73-IB, it cannot possibly be even contended that the delay in holding the elections of the First Respondent was as a result of the failure of the First Respondent to prepare a provisional list of voters. Elections could not have been held in view of the directions issued by the State Government under Section 73-IB and, consequent upon the subsequent notification issued by the Government on 8th June 2004, even the cut off date for preparation of the provisional list of voters was extended from 31st December 2003 to 30th June 2004. Clearly, therefore, this is a case

where the term of office of the members of the Managing Committee must be regarded as having been extended in view of the proviso to sub-section (2B) of Section 73G. That being the position, the fundamental condition for the exercise of power under Section 77A(1)(b) was absent in the present case, since the power conferred therein can be exercised only where the term of office of a Committee of the society has expired.

20. The reasons which have been furnished by the Divisional Joint Registrar for passing the impugned order dated 21st December 2004 are, to say the least, specious. The Court is constrained to observe that those reasons betray a lack of responsibility which one would expect in an order as serious in its ramifications as the appointment of an administrator on a District Central Co-operative Bank. Financial institutions, whether they are in the co-operative sector or otherwise, are prone to serious volatility affecting the confidence of depositors and of the investing public. An appointment of an administrator cannot be a matter of course and that is why

Section 77A confers a discretion upon the Registrar to do so. The order passed by the Divisional Joint Registrar is conspicuously silent about the postponement of the election on 8th June 2004 as a result of the decision of the State Government under Section 73-IB. While finding fault with the First Respondent in not submitting the voters' list by 24th June 2004 and later by 25th September 2004, the Divisional Joint Registrar has failed to notice that the Collector had by his own decision extended the time which was prescribed to the First Respondent to submit the provisional list of voters. In any event, the Divisional Joint Registrar could not but have taken cognizance of the fact that he was exercising his power in the month of December 2004 by which time even the provisional list of voters had been duly submitted on 18th November 2004 and the process of inviting claims and objections had already commenced. At the present, the final list of voters has been published and the election programme is now substantially underway. The ends of justice would manifestly not be served by the appointment of an administrator.

21. Counsel appearing on behalf of the First Respondent has adverted to an order dated 30th September 1994 of the Supreme Court in **Nagshtiya Suresh Babulal & Ors. Vs. Bhaskar Krushna Kothawade & ors**. That is a case where the administrator had assumed charged on 19th August 1994 under Section 77A. This Court in an interim order dated 22nd September 1994 stayed the appointment of the administrator and directed the administrator to hand over charge back to the Managing Committee. In these facts, the Supreme Court while setting aside the order of this Court held that the administrator had assumed charge on 19th August 1994 and was already in office on the date of the interim order passed by the High Court. The order of the Supreme Court was placed for consideration before the Learned Single Judge (Mr.Justice F. I. Rebello) who admitted this petition on 24th December 2004. The Learned Judge furnished reasons for passing an interim order staying the appointment of the administrator. In any event, in so far as this case is concerned, it may be noted that the order of appointment of the administrator was passed on 21st December 2004. The first petition

before this Court was lodged on 22nd December 2004 and the companion petition was lodged on 23rd December 2004, without delay. Be that as it may, I was of the view that it would be eminently desirable that both these petitions are taken up for hearing and final disposal when the petitions came up for confirmation of the ad-interim order. Accordingly, both the petitions were heard finally with the consent of Counsel, after the affidavits were filed and pleadings were complete. In the circumstances, for the aforesaid reasons, I am of the view that the impugned order of the Divisional Joint Registrar dated 21st December 2004 must be quashed and set aside. The order is accordingly set aside.

22. Since the term of the existing elected Managing Committee has been held to stand extended under the proviso to sub-section (2B) of Section 73G by this judgment, it is only appropriate and proper that the Collector must proceed ahead with the election process and complete the election as expeditiously as possible in accordance with the provisions of the Act and the Rules.

23. The petitions shall stand allowed in these terms. In the circumstances, there shall be no order as to costs.

....